

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

JOHN MELVIN GIVENS

PLAINTIFF

v.

NO. 4:15CV00170-JMV

COMMISSIONER OF SOCIAL SECURITY

DEFENDANT

FINAL JUDGMENT

This cause is before the court on Plaintiff's complaint for judicial review of an unfavorable final decision of the Commissioner of the Social Security Administration denying applications for a period of disability and Disability Insurance Benefits and Supplemental Security Income Benefits. The parties have consented to entry of final judgment by the United States Magistrate Judge under the provisions of 28 U.S.C. § 636(c), with any appeal to the Court of Appeals for the Fifth Circuit. The court, having reviewed the administrative record, the briefs of the parties, and the applicable law and having heard oral argument, finds as follows, to-wit:

Consistent with the court's ruling from the bench during oral argument, the court finds the ALJ's residual functional capacity ("RFC") determination is not supported by substantial evidence in the record. In developing the claimant's RFC, the ALJ relied heavily upon RFC assessments provided by non-examining state agency physicians, whose reports include no discussion of the claimant's right upper extremity problem or any medical evidence related to it, including, but not limited to, a March 2012 MRI report showing a rotator cuff tear. Nor, do these physicians' reports include any postural limitations, despite the fact Dr. Blaylock's

consultative examination report clearly indicates functional deficits with the right upper and left lower extremities and limitations in bending and squatting, among others things.

On remand, the ALJ shall re-contact Dr. Blaylock and request a physical residual functional capacity assessment that includes a complete function-by-function assessment of the claimant's ability to perform work activity. If Dr. Blaylock is unable to provide such complete physical functional capacity assessment based on the prior examination, the ALJ shall order a new consultative examination and have the new examiner provide the same. The ALJ shall then reconsider the claimant's RFC based on all the relevant evidence in the record. The ALJ may conduct any additional proceedings that are not inconsistent with this order.

IT IS, THEREFORE, ORDERED AND ADJUDGED that this case is **REVERSED** and **REMANDED** for further proceedings.

This, the 30th day of June, 2016.

/s/ Jane M. Virden
U. S. MAGISTRATE JUDGE